

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

ALLEN KELSO,	§	
	§	
Plaintiff,	§	
	§	
v.	§	2:21-CV-175-Z-BR
	§	
FOOT SPA,	§	
	§	
Defendant.	§	

**ORDER WITHDRAWING THE JANUARY 26, 2022 FINDINGS, CONCLUSIONS,
AND RECOMMENDATION AND GRANTING PLAINTIFF'S MOTION FOR
CONTINUANCE TO SEEK DEFAULT JUDGMENT**

On January 26, 2022, the undersigned United States Magistrate Judge entered a Findings, Conclusions, and Recommendation to Order Plaintiff to Seek Entry of Default and Move for Default Judgment (“FCR”). (ECF 11). Through the FCR, the undersigned recommended that the United States District Judge order Plaintiff to seek entry of default by the United States District Clerk and move for default judgment within 15 days of when the District Judge entered an order adopting the FCR, if the District Judge entered such an order. (*Id.* at 2).

On February 8, 2022, Plaintiff Allen Kelso filed a Motion for Continuance to Seek Default Judgment. (ECF 12). By that motion, Plaintiff states that “[a]pparently the certified / registered mail was delivered to the business[] and was signed for by an employee of the business[;] however[,] Plaintiff is not sure that the person who signed for the certified / registered mail was the intended recipient.” (*Id.* at 1). Plaintiff “respectfully requests an extension of thirty (30) days in which to attempt personal service [on] the owner and/or Registered Agent of the business and/or voluntarily dismiss this case.” (*Id.* at 2).

Having considered Plaintiff's motion (ECF 12), the Court finds it should be GRANTED. The undersigned hereby WITHDRAWS the January 26, 2022 Findings, Conclusions, and Recommendation (ECF 11). Because it appears from Plaintiff's motion that Plaintiff believes he may not have properly effected service on Defendant,¹ Plaintiff is hereby ORDERED to effect service on Defendant Foot Spa on or before **March 10, 2022** or, alternatively, Plaintiff may file an Advisory by **March 10, 2022** demonstrating good cause for his failure or inability to effect service on Defendant. If Plaintiff fails to effect service on Defendant, the Court does not receive an Advisory, or the Advisory fails to demonstrate good cause, the undersigned may recommend to the United States District Judge that the Court dismiss this action without prejudice by authority of Rule 4(m).

Finally, the undersigned notes that this case was filed on September 1, 2021—over five months ago. As such, Plaintiff is cautioned that the undersigned will be hesitant to entertain any future motions for continuance.

IT IS SO ORDERED.

ENTERED February 11, 2022.


LEE ANN RENO
UNITED STATES MAGISTRATE JUDGE

¹ To date, the undersigned has not considered whether Plaintiff has properly effected service on Defendant.